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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Trump Win Foreshadows Deportations, Border Wall Fight

By Allissa Wickham

Law360, New York (November 9, 2016, 2:40 AM EST) -- Republican candidate Donald Trump won the U.S. presidency on Tuesday, setting the stage for a surge in deportations, an ideological screening test for entering the U.S. and a potentially massive fight over a border wall.

Although Democrat Hillary Clinton had been favored to win, Trump upended expectations on Tuesday evening and became the 45th U.S. president. Immigration was, undoubtedly, one of Trump's signature issues during the campaign, with the real estate businessman famously seeking to build a wall along the southern border. Trump has also called for the deportation of an estimated 11 million immigrants living in the country without legal permission, although in recent months his focus has shifted more toward removing immigrants who have committed crimes.

Amanda Frost, a law professor at American University Washington College of Law, predicted Trump would ramp up deportations, although she doubted that all 11.3 million unauthorized immigrants would be removed in just a couple of years. And even if the government didn't go quite that far, if Trump tried to deport more people, he certainly could, according to Frost.

"For example, someone was speculating [that] he could get rid of the firewall that means that if you pay taxes and you're unauthorized, the IRS won't report your address to immigration authorities," Frost said. "And, he could say now we want those addresses, right?"

Indeed, Trump has pledged to triple the number of U.S. Immigration and Customs Enforcement deportation officers, has said his administration would immediately begin removing "criminal" immigrants, and has promised that deporting those who overstay visas would be a "top priority."

Deportation relief initiatives are also on the chopping block. Trump has said he will end President Barack Obama's executive actions on immigration — such as the Deferred Action for Childhood Arrivals program — which allow for deferred deportation and work authorization for certain unauthorized immigrants.

And then there's the wall. Trump still claims Mexico will foot the bill for the barrier, even though the country's president has said that during their meeting, he'd made it clear Mexico wouldn't be paying for a border wall.

As of late October, Trump had floated the idea of the "End Illegal Immigration Act," which would purportedly fund the building of the wall, with the "full understanding" that Mexico would reimburse the U.S. for the cost. As for the wall's price, Trump has pegged it at \$12 billion, but at least one construction expert cited by The Washington Post found the cost would be at least \$25 billion.

"The cost is very high — \$25 billion — and to be successful and effective, it needs to not just be built, but also be manned and ... policed. And that's very expensive," Frost said, noting that he'll "need Congress to fund it ... and that will be difficult."

"He says Mexico will pay, I don't see any evidence that he can make that happen," she added.

And there may also be changes for immigrants seeking to enter the country legally. In mid-August, Trump called for an ideological screening test for immigrants, saying, that people who "do not believe in our Constitution or who support bigotry and hatred will not be admitted for immigration into our country."

This followed his previously proposed ban on Muslims coming to the U.S. — a stance the president-elect hasn't emphasized recently on the campaign trail. Though the campaign seemed to back off from discussing the ban in the last few months, it hasn't erased thoughts that the Trump administration will seek a religious entry test.

"The folks who he has advising him, I believe, have decided that framing the question as a Muslim ban is not a popular way to discuss it. ... They backed away from that formulation because of politics, not because they changed their mind about whether they thought that was good policy," said William Stock of Klasko Immigration Law Partners LLP, who is also president of the American Immigration Lawyers Association.

"I think it is very possible that they would potentially even make religion-based exclusion grounds," Stock added. "It would not surprise me."

Trump has also called for temporarily suspending immigration from parts of the globe that have "a history of exporting terrorism," and his campaign site calls for suspending visas — for now — for any area where "adequate screening cannot occur."

On the business immigration front, Trump advocates for a nationwide E-Verify system, which would electronically screen all new hires for their eligibility to work in the United States, and has called for boosting the prevailing wage that's used to set the bar for H-1B workers. There may also be more of a push for labor market tests, predicted Susan Cohen, chair of the immigration practice at Mintz Levin Cohn Ferris Glovsky & Popeo PC.

"I can imagine, that a lot of the proposals that have come up through Congress on some of the other immigration bills from certain [lawmakers] who want to impose labor market tests on ... all these visa categories where we don't have them now ... we could expect to see an increase in that," Cohen said.

It's also unclear how Trump would deal with the consequences of introducing mandatory E-Verify for industries like agriculture, where at least half of the workers are reportedly unauthorized.

Overall, after an election season in which immigrants were frequently targeted, it appears that an era of heavy immigration enforcement is on its way. Contending that "personnel is policy" in Washington, Stock noted that those who have been drawn toward supporting Trump are people like Sen. Jeff Sessions, R-Ala., who believe in "very aggressive immigration enforcement."

"They believe in making lives so miserable for people of color in this country, that those people of color who happen to be illegal immigrants decide that they would prefer to live in their home countries," Stock said. "That, I think, we would see implemented at as large a scale as they could afford."

--Editing by Katherine Rautenberg and Emily Kokoll.